IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1961

No. 62

PAUL SEYMOUR, *Petitioner,*

v.

SUPERINTENDENT OF THE WASHINGTON STATE PENITENTIARY, *Respondent.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE RESPONDENT

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STATE PRINTING PLANT, OLYMPIA, WASH.

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TO: THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

ADDITIONAL STATEMENT OF THE CASE

The respondent, except as hereafter noted, is satisfied with the statement of the case as set forth in the brief of counsel for petitioner.

Counsel for petitioner has, in general terms, on page 4 of his brief, described the "*situs*" of the crime committed by the petitioner, however, he omits the legal description of the land in question. It is the respondent's position that the legal description of the land in question should also be included in the statement of the case for it clearly indicates that the land in question, *inter alia*, was part of the "Government Town-site of Omak", (R 14, 16).

Accordingly, in addition to the statement of the case set forth in petitioner's brief, the respondent respectfully submits that the legal description of the "*situs*" of the crime in question should be considered as a part of the factual statement of the case. The legal description of the land in question is as follows:

> "Lot 9, block 118 of the Government Town-site of Omak and situate in Section 36, Township 34, north range 26 E. W. M." (R 16).

SUMMARY OF ARGUMENT

As said by the Supreme Court of the State of Washington (R 26) in the case at bar,

> "The crime not having been committed in "Indian Country" as defined by Statute (18 U. S. C., (1952 ed.) Sec. 1151), the courts of the United States did not have exclusive jurisdiction."

The basis for this decision is derived from the definition of "Indian Country" contained in Sec. 1151, Tit. 18 U. S. C., which means "all land within the limits of any Indian reservation under the

jurisdiction of the United States Government". This definition, upon which depends whether or not jurisdiction in this case is vested in a federal or a state court, coupled with the language chosen by Congress in the *Act of March 22, 1906* (Appendix page 44) "opening" the diminished Colville Indian Reservation to settlement by non-Indians, and the results which Congress must have anticipated, leads to the conclusion that Congress intended to diminish, if not dissolve the reservation, subject to reservations and allotments in severalty to the Indians.

An Indian Reservation cannot, in the nature of things, be closed and reserved for the use and occupancy of Indians, and, at the same time "opened" to settlement and entry by non-Indians.

Congress, in the *Act of March 22, 1906*, (Appendix page 44) projected an extensive plan for the diminished Colville Indian Reservation, and in fact, the Act takes some dispositive action of every piece of ground within the "limits" of the reservation. The Act provides allotments of 80 acres to each Indian of the Colville Tribes, it provides for reserving lands for numerous Indian and Agency purposes, it provides for the making of reservations for townsites for the "future public interests" and subject to the allotments and reservations "opened" the Colville Reservation to entry and settlement under the general Mining and Homestead Laws.

The federal Indian policy in vogue when the *Act of Congress of March 22, 1906* was enacted, was

one of gradual withdrawal and opening of Indian reservations, granting allotments, and the assimilation of the Indian into the white man's world. (Cohen, Hand Book of Federal Indian Law (1942) Chapter 11, pp. 206-217).

Notwithstanding what the Federal Indian Policy was in those days, it is manifest from the provisions of the *Act of Congress of March 22, 1906*, (Appendix page 44) that Congress, by its extensive treatment of the lands of the diminished Colville Indian Reservation intended to diminish, if not dissolve the reservation, subject to the reservations and allotments in severalty to the individual enrolled members of the Colville Confederated Tribes. Additionally, this dimunition or dissolution of the diminished Colville Indian Reservation was not undone, or substantially changed by the *Act of Congress of July 24, 1956*, 70 Stat. 626, restoring lands undisposed of under the *Act of March 22, 1906* (Appendix 44) "to tribal ownership to be held in trust by the United States to the same extent as all other tribal lands on the existing reservation, subject to any existing valid rights."

In any event, the crime involved was not committed in "Indian Country" and not "within the limits of any Indian reservation under the jurisdiction of the United States Government", for the reason that the criminal act was committed upon the Government Town-site of Omak, a reservation created under the authority of Section 11 of the *Act of Congress of March 22, 1906* (Appendix 49)

for the "future public interests." (A certified copy of the Plat of the Government Town-site of Omak filed with the auditor of Okanogan County marked respondent's exhibit 1, and a certified copy of the original patent to Lot 9, block 118 of the Government Town-site of Omak where the crime in question was committed, marked respondent's exhibit 2 are transmitted herewith to the clerk for filing).

As was succinctly stated relative to this facet of the case in *United States v. La Plant*, (D. C.,) 200 Fed. 92, 95:

> "* * * The indictment alleges that the Secretary of Interior had designated a part of Sec. 31 on the land thus opened for sale as the Town-site of Dupree, had caused it to be surveyed into blocks and lots, and that the offense was committed on one of the lots in that town-site. It thus appears that the Secretary of the Interior had reserved this land for a town-site. If, at the same time, it is to be considered a part of an Indian reservation, it has been reserved for two purposes. When the town-site map was filed, the streets and public places must have been dedicated to the public. Congress could never have intended that the Indian right of occupation as to those streets and public places should continue. It must be that, if the offense had been committed upon the street of this town-site, it would have been within the jurisdiction of the state courts. * * *"

Accordingly, it is the additional contention of the respondent, that the "Government Town-site of Omak", within which the crime involved was committed (R 14, R 16, Exhibits 1 and 2) became

subject to the exercise of criminal jurisdiction by the courts of the State of Washington upon the filing of the Town-site Plat with the County Auditor of Okanogan County. When so filed, the lands encompassed within the town-site were dedicated to the public interests, and those lands acquired the same status that other lands possess, which are subject to the exercise of criminal jurisdiction by the courts of the State of Washington.

ARGUMENT

THE "SITUS" OF THE CRIME OF WHICH THE PETITIONER WAS CONVICTED IS NOT "INDIAN COUNTRY".

The diminished Colville Indian Reservation, is located in the north east part of the State of Washington in the Counties of Okanogan and Ferry and was originally established in accordance with an Executive Order of President Grant under the date of July 2, 1872 which provides:

> "EXECUTIVE MANSION,
> *Washington, July 2, 1872.*
>
> "It is hereby ordered that the tract of country referred to in the within letter of the Commissioner of Indian Affairs as having been set apart for the Indians therein named by executive order of April 9, 1872, be restored to the public domain, and that in lieu thereof the country bounded on the east and south by the Columbia River, on the west by the Okanogan River, and on the north by the British possession, be, and the same is hereby, set apart as a reservation for said Indians, and such other

> Indians as the Department of Interior may see fit to locate thereon.
>
> "U. S. GRANT." (R 17).

The Colville Indian Reservation in the State of Washington was first diminished in accordance with the *Act of Congress approved July 1, 1892* (27 Stat. 62) and the *Presidential Proclamation of April 10, 1900, (Vol. I, Kappler, Indian Affairs, Laws and Treaties, page 966)* which restored approximately the north one-half of the reservation to the public domain, subject to allotments of eighty (80) acres to each individual Indian residing on the restored portion. The balance of the restored portion of the reservation with certain exceptions, was opened to entry and settlement under the Homestead Laws in accordance with the *Presidential Proclamation of April 10, 1900, supra.*

Section 8. of the *Act of Congress of July 1, 1892,* (27 Stat. 62) (R 18) specifically provided that the Act was not to be

> "construed as recognizing title or ownership of said Indians to any part of said Colville Reservation, whether that hereby restored to the Public Domain *or that reserved by the Government for their use and occupancy.*"

The remaining portion of the reservation which was reserved for the use and occupancy of the Confederated Tribes of the Colville Reservation is commonly known as the "south half of the diminished Colville Reservation."

The "*situs*" of the crime of which the petitioner was convicted, i.e.,

> "Lot 9, block 118 of the Government Town-site of Omak and situate in Section 36, Township 34, north range 26 E. W. M." (R 16),

is within the so-called south half of the diminished Colville Indian Reservation.

In the year 1906, Congress opened to entry and settlement under the Homestead Laws, the so-called south half of the diminished Colville Indian Reservation, and directed the Secretary of the Department of Interior to sell and dispose of the surplus, unallotted and unreserved lands of the diminished Colville Indian Reservation of the State of Washington in accordance with the *Act of Congress of March 22, 1906*, 34 Stat. 80, (Appendix 44) and the *Presidential Proclamation of May 3, 1916*, (IV Kappler, *Indian Affairs, Laws and Treaties*, page 966).

The Supreme Court of the State of Washington decided, in the case at bar, that the crime of which the petitioner was convicted was not committed in "Indian Country" as defined by Statute (Section 1151, Tit. 18, U. S. C.). In so deciding, the Supreme Court of the State of Washington adopted the finding of the Honorable Joseph Wicks, Judge of the Superior Court for Okanogan County where the matter had been referred for findings of fact. (R 14) The court also reaffirmed its previous decision in *State ex. rel. Best v. Superior Court*, 107 Wash. 238, 181 Pac. 688, that the *Act of Congress of March 22, 1906* had the effect of restoring to the public domain, the south half of the diminished Colville Indian Reser-

vation, subject to the reservations and allotments in severalty to individual Indians.

Section 1151, Tit. 18, U. S. C., defines, "Indian Country" as follows:

> "Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) *all land within the limits of any Indian reservation under the jurisdiction of the United States government*, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

Did the *Act of Congress of March 22, 1906* and the *Presidential Proclamation of May 3, 1916* implementing the *Act of Congress*, remove the land upon which the crime in the instant case was committed, from "within the limits of any Indian Reservation under the jurisdiction of the United States Government" as provided in Section 1151, Tit. 18 U. S. C., and as a result vest the state court with jurisdiction?

There are a number of reported cases substantially similar to the case at bar and supportive of the decision of the Supreme Court of the State of Washington in the instant case. One of these cases is *Tooisgah v. United States*, (10th Circ.) 186. Fed. (2d) 93, 96. In that case, the petitioner, a full

blooded Apache Indian had been convicted of the murder of another Indian in the United States District Court for the Western District of Oklahoma. The indictment alleged that the homicide had occurred on June 2, 1942, in Caddo County, in the Western District of Oklahoma in "Indian Country" upon a reservation within the exclusive jurisdiction of the United States. In addition, the homicide, apparently, was committed on a restricted allotment to which the United States held legal title.

The petitioner filed his motion in the District Court, praying that the judgment of conviction be vacated on the basis that the trial court was without jurisdiction. The District Court denied the motion and, on appeal, the Circuit Court of Appeals for the 10th Circuit held, that the District Court did not have jurisdiction of the prosecution, and, that the conviction should be vacated and the indictment dismissed.

The court, in the course of its opinion in *Tooisgah v. United States, supra*, stated:

> "* * * the only question for decision is whether the asserted federal jurisdiction over the offense is sustainable under 328 (since amended and now § 1153 Tit. 18 U. S. C.) as an offense of murder of one Indian by another, 'on and within any Indian Reservation under the jurisdiction of the United States Government.'
>
> "* * *
>
> "Undoubtedly, the alleged crime was committed on lands originally 'on and within any

Indian Reservation', set apart and established by the Medicine Lodge Treaty of 1867 between the United States and the Kiowa, Comanche and Apache Indians, 15 Stat. 581, 589. See *Lone Wolf v. Hitchcock*, 187 U. S. 553, 554, 23 S. Ct. 216, 47 L. Ed. 299.

"Subsequently, by agreement dated October 6, 1892, approved June 6, 1900, 31 Stat. 676, the Kiowa, Comanche and Apache Indians occupying the reservation agreed with the United States that subject to the allotments of land in severalty to the individual members of the tribes; the setting aside of 480,000 acres of grazing lands, and other considerations, the tribes ceded, conveyed, transferred, relinquished and surrendered forever and absolutely all their claim, title and interest of every kind and character in and to the lands embraced in the reservation. Out of the lands thus ceded, and in part consideration thereof, it was agreed that each member of the respective tribes should have the right to an allotment of 160 acres of land, to be held and owned in severalty. The agreement also provided that when the allotments of land had become selected and approved by the Secretary of the Interior, the titles thereto should be held in trust for the allottees respectively for a period of twenty five years in the time and manner and to the extent provided for in the General Allotment Act of February 8, 1887, 24 Stat. 388.

"Section 6 of the General Allotment Act, as amended by the Act of May 8, 1906, 34 Stat. 182, provided that at the expiration of the trust period, and when the lands had been conveyed to the Indian allottees in fee, every allottee 'shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside', provided that 'until the issuance of fee simple patents

all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: And provided further, That the provisions of this Act shall not extend to any Indians in the Indian Territory.' See *Ex parte Nowabbi*, 60 Okl. Cr. 111, 61 P. (2d) 1139. It is not alleged that either Indian involved here, occupied the status of an allottee of lands, the title to which is held in trust by the United States, and federal jurisdiction is not invoked or sought to be sustained under the provisions of this Act.

"The allotment of lands in severalty within the limits of the established reservation did not for that reason disestablish the reservation of which they were a part, or exclude the allotments from it. *United States v. Kiya*, D. C., 126 F. 879. Once the reservation is established 'all tracts included within it remain a part of the reservation until separated therefrom by Congress.' *United States v. Celestine*, 215 U. S. 278, 285, 30 S. Ct. 93, 95, 54 L. Ed. 195; Cf. *Kills Plenty v. United States*, 8 Cir., 133, F. (2d) 292; *United States v. Frank Black Spotted Horse*, D. C., 282 F. 349; *Hatten v. Hudspeth*, 10 Cir., 99 F. (2d) 501.

"When, however, the tribes occupying the reservation ceded the lands embraced within it to the United States, relinquishing and surrendering 'all their claim, title and interest,' subject to the allotments in severalty, and every allottee was given the benefit of and made subject to the laws, both criminal and civil, of the state or territory, with the gift of citizenship and equal protection of the laws, Section 6 of the Act of February 8, 1887, 24 Stat. 388, we think it cannot be doubted that Congress thereby intended to dissolve the tribal government, disestablish the organized reservation, and assimilate the Indian Tribes as citizens

of the state or territory. *United States v. LaPlant*, D. C., 200 F. 92."

"• • •

"We find it unnecessary to decide whether the trust allotments in question might have been construed as 'Indian Country' under 217 or 548 when the offense was committed, since we are convinced that Congress did not intend to use the terms 'Indian Country' and 'within the limits of any • • • reservation' synonymously when it came to relax the limitations imposed upon 217 by 218. When the legislative scheme is considered in its historical setting, we think it of controlling significance that instead of employing the familiar term 'Indian Country', with its broad and flexible definition to delineate federal jurisdiction, Congress chose language carefully designed to recognize the sovereign jurisdiction of the state, unless the offense was committed on a place set apart for the government of the Indians as a tribe. The deliberate choice of the phrase 'within any Indian Reservation under the jurisdiction of the United States government' indicates, we think, a Congressional disposition to restrict federal jurisdiction to organized reservations lying within a state.

"In the reenactment of 548 as Section 1153, Title 18 U. S. C. A., Congress substituted 'Indian Country' for 'on (or) within any Indian Reservation', thus conferring federal jurisdiction over the enumerated tribes when committed in Indian Country, as defined in Section 1151 of the revised Criminal Code.

"But, judging federal jurisdiction here under the words of the statute when the offense was committed, we are now constrained to hold that when the reservation was dissolved and tribal government broken up, the allotted lands

> lost their character as lands 'within any Indian Reservation'. Nor did they retain or acquire a character and identity peculiar to a separate Indian Reservation. We, therefore, hold that the court lacked jurisdiction over the offense. The order is, accordingly, reversed and the cause remanded with directions to vacate the judgment and dismiss the indictment."

The Act of Congress, upon which the court in *Tooisgah v. United States, supra*, grounded its decision, which was the agreement with the Kiowa, Comanche and Apache Indians, dated October 6, 1892 and approved by Congress June 6, 1900, 31 Stat. 676, had substantially the same effect upon that group of Indians and their reservations, as did the *Act of Congress of March 22, 1906*, 34 Stat. 80, upon the south half of the diminished Colville Indian Reservation.

The Act of Congress involved in *Tooisgah v. United States, supra*, provided for allotments of 160 acres to individual members of the tribes out of the lands ceded, the reserving of 480,000 acres of land for grazing purposes, and reserving out of the lands ceded, lands "used or occupied for military, agency, school, school-farm, religious or other public uses or in Sections 16 and 36 in each Congressional Township" and the balance of the lands ceded by the tribes were opened to settlement and entry under the Homestead Laws and Townsite Laws by Proclamation of the President.

The *Act of Congress of March 22, 1906*, affecting the diminished Colville Reservation, provided

for allotments to individual members of the Colville Indian Tribes of 80 acres to each individual member and, on approval of the allotments by the Secretary of Interior, patents were issued therefor, under the provisions of the General Allotment Law of the United States. The Act further, reserved lands necessary for agency, school, and religious purposes, and any lands now occupied by the agency building and the site of any saw mill, grist mill or other mill property on the land. The *Act of Congress of March 22, 1906* also authorized the Secretary of Interior to reserve from the lands, "whether surveyed or unsurveyed, such tracts for town-site purposes, as, in his opinion, may be required for the future public interests" and the balance of the lands were opened to settlement and entry under the general Homestead Laws of the United States.

The only difference between the Act involved in *Tooisgah v. United States, supra*, and the *Act of Congress of March 22, 1906, supra*, involved in the case at bar, is that in the Act involved in *Tooisgah*, the lands were ceded by the Indians to the United States, in consideration of the payment to the Indians of two million dollars. The cession of the lands, however, in the *Tooisgah case, supra*, was necessary in order that the United States might make good title to the lands opened to settlement and entry under the Homestead Laws, for the lands in the *Tooisgah* case were held by those tribes pursuant to the treaty entered into between the Indians and the United States which is known as the *Medicine Lodge*

Treaty of 1867, 15 Stat. 581. Of course, in the *Act of Congress of March 22, 1906*, there was no necessity for a cession of the lands by the Colville Indians for they were never the fee owners of the lands, the reservation having been created by Executive Order. Section 8 of the *Act of Congress of July 1, 1892*, 27 Stat. 62 makes it abundantly clear that title to the Colville Reservation is vested in the United States, for it provides:

> "That nothing herein contained shall be construed as recognizing title or ownership of said Indians to any part of said Colville Reservation, whether that hereby restored to the public domain *or that reserved by the Government for their use and occupancy.*" (Emphasis supplied)

It would, indeed, be inconsistent and inappropriate to say that, an Indian Reservation, (an Indian Reservation being commonly known to be an area of land reserved from public sale and appropriation, and dedicated to the use and occupancy of tribal Indians) remains an Indian Reservation, when its closed or reserved Indian character is extinguished by Act of Congress, opening such land to the entry, settlement and ownership by non-Indians.

It is further to be observed that the Act is a total, comprehensive and apparently intended to be a final treatment of the diminished Colville Reservation, and manifestly, Congress intended, by its extensive treatment concerning the lands within the reservation, to dissolve the so-called diminished Col-

ville Reservation and restore the same to the public domain.

In the case of *The Application of De Marrias*, 77 S. D. 294, 91 N. W. (2d) 480, the Supreme Court of South Dakota held that the opening of the Lake Traverse Indian Reservation in South Dakota, pursuant to an agreement with the Indians of that reservation, opening the reservation to entry and settlement under the *Homestead Laws of the United States*, (26 Stat. 1035), removed the *situs* of the crime, there involved, which was within the original exterior boundaries of the Lake Traverse Indian Reservation, from the definition of "Indian Country", as defined in Section 1151 of Tit. 18, U. S. C.

In the *De Marrias case, supra*, there is found in the course of the opinion, a citation to a very interesting Law Review article, authored by Mr. Clinton G. Richards, United States Attorney for the District of South Dakota which article is found in Volume 2 of the *South Dakota Law Review* on page 48. Commencing on page 50 of Volume 2 of the *South Dakota Law Review* under the caption, "What Is 'Indian Country' ", the author states:

> "In the 1948 Revision this term is defined and appears as Section 1151 of Title 18, U. S. C. A. (62 Stat. 757, amended 63 Stat. 94 (1949)). Three different kinds of property are there declared to be 'Indian Country.' Under subdivision (a) of the section covering 'land within the limits of any Indian reservation,' some question has been raised as to just what are the 'limits' of the Indian reservations in South Dakota. It would appear, however, that those

portions of the Pine Ridge, Rosebud, Lower Brule and Crow Creek Reservations which have never been opened to white settlement by any act of Congress or presidential proclamation, and known as the 'closed' portion of such reservations are clearly within such 'limits,' and that the federal court has jurisdiction over any violation of the laws of the United States involving an Indian, whether the acts are committed upon patented or unpatented land within such limits. However, in those areas which are included within the original territorial limits of the Indian reservations but which have been opened to white settlement from time to time, and which at this time practically include all of the Cheyenne, Standing Rock, Sisseton and Yankton Sioux Reservations, the 'limits' of such reservations are confined to the portions thereof for which the United States still retains title, such as, for example, the agency, school and hospital grounds, and together with all the remaining Indian allotments wherever located on such reservation held in trust for the allotment Indians. This rule has quite recently been applied by the United States District Court in a civil case affecting that part of the Pine Ridge Indian Reservation which is within the County of Bennett, (*United States v. Putnam and Ward*, Civil No. 586, W. D. Sioux Falls, S. D.) and by the Circuit Court of South Dakota, Second Judicial Circuit, in a criminal case where the act was committed in the town of McLaughlin, within the Standing Rock Reservation. (*In re Culbertson*, S. D. Circuit Court, (2d) Circuit, Minnehaha County, March 20, 1956.) This rule was in effect applied by the United States District Court in an earlier case sustaining federal court jurisdiction where the crime had been committed on an allotment in Stanley County, South Dakota, within the exterior boundaries of the former Great Sioux

Reservation, but not within the 'boundaries' of any of the lesser reservations later created by Congress. (*Ex Parte Van Moore*, 221 Fed. 954 (D. S. D. 1915).) Of course, where the crime was committed outside the 'closed' portion of the reservation, even though within the original territorial limits of the reservation, but on patented ground to which the Indian title has been extinguished, it is held that the state court does have, (*State v. Sauter*, 48 S. D. 409, 205 N. W. 25 (1925).) and that the federal court does not have, (*United States v. La Plant*, 200 Fed. 92 (D. S. D. 1911).) jurisdiction. The courts of Montana have adopted a different rule, holding that the federal court (*Guith v. United States*, 230 F. (2d) 481 (9th Cir. 1956).) does have jurisdiction, but that the state court does not, (*State ex rel. Irvine v. District Court*, 125 Mont. 398, 239 P. (2d) 272 (1951).) even though the crime be not one of the Ten Major Crimes. (*State ex rel. Bokas v. District Court*, 108 Mont. 37, 270 P. (2d) 396 (1954).)."

In *State v. Sauter*, 48 S. D. 409, 205 N. W. 25, 28, the Supreme Court of South Dakota decided that the offense involved, which was committed on an unpatented Homestead claim situated within the original boundaries of the Cheyenne Indian Reservation, was no longer, "within the limits of any Indian Reservation in the State of South Dakota".

The State of South Dakota, through its State Legislature, ceded to the United States Government by the Enactment of Chapter 106, Laws of 1901, jurisdiction of certain crimes committed on Indian Reservations in the State of South Dakota. The United States assumed the criminal jurisdiction tendered by the State of South Dakota by the *Act of Congress*

of February 2, 1903 (32 Stat. 793), which prescribed that the jurisdiction of the Federal Courts would extend to certain crimes, "*within the limits of any Indian Reservation* in the State of South Dakota". (Emphasis supplied)

The Supreme Court of South Dakota, in deciding that the "limits" of the Cheyenne Indian Reservation have been changed stated:

> "This law was enacted in 1903, and no doubt would govern this case had the reservation remained the same as it was then, but in 1908, a law (Chapter 218, 35 St. At Large, 460) was enacted changing the boundary of the Cheyenne Indian Reservation whereby the territory in which this offense was committed was excluded from the reservation. This brings the case clearly within what is said in *United States v. La Plant* (D. C.), 200 Fed. 92, and for the reasons stated in that case, we hold that the state courts have jurisdiction of this case * * *"

A review of the *Act of Congress of May 29, 1908* (35 Stat. 460) which formed the basis for the decision in *State v. Sauter, supra*, is not substantially different than the *Act of Congress of March 22, 1906* (34 Stat. 80) (Appendix 44) affecting the Colville Indian Reservation, and in their ultimate reach, the Acts have the same effect, viz., extinguishing the closed or reserved character of the lands of these reservations opened to settlement by non-Indians.

The difference between the Acts of Congress affecting the Colville Indian Reservation and the Act of Congress affecting the Cheyenne Indian Res-

ervation, at issue in *State v. Sauter, supra*, is noted in *U. S. v. La Plant*, (D. C.) 200 Fed. 92 wherein the court states:

> "* * * The question, therefore, is whether or not on the 20th day of March, 1911, when this offense was committed, the place where it was committed was within an Indian reservation. That place, according to the indictment, was included in the land open to settlement by Act of May 29, 1908, c. 218, 35 Statutes at Large, 460. It is claimed by the United States Attorney that that act did not diminish the reservation, so as to exclude the land therein referred to. In section 2 of the act, however, is found the following proviso:
>
> > "Provided, That prior to the said proclamation, the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the area described in Section 1 of this act, to relinquish such allotment and to receive in lieu thereof an allotment anywhere within the respective reservations *thus diminished*, to which reservations the said Indians may belong."
>
> "No other meaning can be given to the words italicized than that the reservations were diminished, and they were diminished by the act itself. The word, "thus", so indicates. It appears, therefore, that Congress intended to diminish the reservations at the time the act was passed, and necessarily thereby to extinguish the Indian title to the part excluded. It is claimed, however, by the District Attorney, that any such intention which might be gathered from the proviso, above quoted, is rebutted by Section 9 of the act. That section declares that the United States does not guarantee to find a purchaser for the land, does not agree to buy the

land, and acts only as trustee. But a trustee has not only the legal title, but he has also the right to possession, and the fact that the Government is to act as trustee for the Indians does not indicate that their title has not been extinguished. There is nothing in Section 9 providing that if the land is not sold it shall be turned back to the Indians. The Government simply agrees to hold the money realized from the sale of the land, whenever it receives it, for the benefit of the Indians.

" * * *

"It must have been the intention of Congress by the act of 1908 to extinguish the title at some time. The question is whether, as to land not included in town sites, the intention was to extinguish the title at the time the act was passed, or at the time the proclamation of the President was issued, or at the time the homesteader entered upon the land, or at the time he had made partial payments thereon, or at the time he had made the full payment. The practical inconvenience which would result from holding that the intention was to extinguish the title at any other time than when the act was passed, or the proclamation issued, is very apparent.

"The question here concerns the relative jurisdiction of the state courts and the federal courts. It is important to definitely know over what land the state courts have jurisdiction and over what land the federal courts have jurisdiction, and to say that the Indians' right to occupy the land thus open for settlement continued until the land has been paid for, or partially paid for, would be to hold that the entryman and the Indian would have the right to occupy the same land at the same time. It would be to hold that a white person had a

> right to occupy detached portions of the land, while the Indian had a right to occupy other other detached portions thereof. In a great many cases it would be difficult, if not impossible, to determine, in such case, whether the offense was committed on a tract of land over which the United States had jurisdiction, or a tract over which the state courts had jurisdiction."

We do not deem it to be of overwhelming significance, that the Act of Congress affecting the Colville Indian Reservation does not contain the words, "thus diminished" such as is discussed in *U. S. v. La Plant, supra,* for it is the substantiative provisions of those Acts which accomplished the transformation of the character of the reservation lands and affected the diminishing of the reservations. The words, "thus diminished" make for greater ease of judicial determination, but it is the effect of the provisions of the Acts themselves which accomplished the diminishing of the reservations, and it must of necessity follow, that Congress so intended.

It is also worthy of note that in *Draper v. United States,* (8th Circ.) 248 F. (2d) 292, 295, the court held that the portion of the Pine Ridge Indian Reservation which was opened to settlement and entry had been restored to the "public domain" by the *Act of Congress* of May 27, 1910, (36 Stat. 440).

Congress has, with particularity, defined the terms, "Indian Country", in Section 1151, Tit. 18

U. S. C., and whether or not criminal jurisdiction, with some exceptions not pertinent here, is vested in federal or state courts, of necessity, requires a determination whether the location of the crime involved falls within the definition of "Indian Country".

Section 1151, Tit. 18, U. S. C., provides:

> "Except as otherwise provided in Sections 1154 and 1156 of this Title, the term, "Indian Country", as used in this Chapter, means (a) *all land within the limits of any Indian Reservation under the jurisdiction of the United States Government*, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the state, and (c) all Indian allotments, the Indian titles to which have not been extinquished, including rights-of-way running through the same." (Emphasis supplied)

From the above quotation of Section 1151, Tit. 18, U. S. C., it is to be seen that, contained within the Legislative definition of "Indian Country", and as a part of that definition, are the words, "within the limits of any Indian Reservation under the jurisdiction of the United States Government". However, Congress has not defined the term, "Reservation", in the law relating to Criminal Jurisdiction over Indians. Therefore, in the case at bar, the determination of whether or not the *situs* of the crime was, "within the limits of any Indian Reservation

under the jurisdiction of the Unted States", must be largely determined by ascertaining whether or not Congress in the *Act of March 22, 1906,* (Appendix 44) intended to extinguish the reserved or closed character and restore to the public domain that portion of the reservation opened to settlement and entry by non-Indians.

It is to be seen by a study of the *Act of Congress of March 22, 1906,* (Appendix, § *1, 3, 5, 8, & 11*) that Congress intended to provide for the sale of all surplus, unallotted and unreserved lands within the diminished Colville Indian Reservation by vesting the Secretary of the Interior with full power and authority to accomplish this purpose. Congress could not have intended that the lands opened to settlement and entry on the Colville Indian Reservation under the general Homestead Laws, could, at the same time, be settled upon the entry made by a homesteader and, also used and occupied by the Colville Indians as a part of the Indian Reservation. The statement of the proposition of itself, manifests the inconsistency and inappropriateness of charging Congress with such a legislative intention, for a reservation certainly cannot be both "opened" and "reserved" at the same time. Therefore, in construing the plain meaning and effect of the words used by Congress in the *Act of March 22, 1906,* (Appendix 44) it seems manifest that Congress intended that the unallotted, unreserved and surplus lands of the diminished Colville Reservation be restored

to the public domain and their reserved character extinguished.

> "* * * but, if Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular situation may not have been contemplated by the legislators. * * *"
> *Barr v. United States*, 324 U. S. 83.

It is further to be observed that, in Section 3 of the *Act of Congress of March 22, 1906*, (Appendix 44, 45) Congress has provided that the lands shall be, "opened to settlement and entry under the provisions of the Homestead Laws". The Homestead Laws (§ 161-302, Tit. 43 U. S. C.) refer to the procedure and qualifications for entry and settlement upon the "public domain" or "unappropriated public lands", and, in construing the legislative intent as expressed in Section 3 of the *Act of Congress of March 22, 1906*, it is not unreasonable to presume by the reference to the Homestead Laws, Congress intended that the lands opened by that Act to settlement and entry under the Homestead Laws should be considered for the purposes of the Homestead Act as restored to the "public domain".

Prior to the year 1906, and until the year 1934, it appears that it was a policy of Congress and the Executive Branch of the United States Government to withdraw portions of reservation land, and open such land to settlement and entry by non-Indians, placing the Indians in closer proximity to non-Indian people and non-Indian communities, with the

thought in mind that such a policy would eventually lead to the beneficial result of the Indians achieving a higher degree of civilization and enabling the Federal Government to terminate its federal supervision of the Indian Nations.

> As said in *State v. Shoemaker*, 73 S. D. 120, 39 N. W. (2d) 524, 528:
>
> "• • • It has long been common knowledge that the overall policy of the Government looks toward the assimilation of its Indian wards into the body of its citizens. That which has happened and is happening was then anticipated, viz., the land comprising the reservations would pass from the hands of the Indians, and its population would shift away from the reservation. In other words, a gradual extinction of the reservations was in the contemplation of the parties."

In effectuating this purpose, the vehicle of Congress was to open portions of the reservations to settlement by non-Indians, and reserving portions for Indian use and occupancy. This purpose, and the effect to be gained, is commented upon in connection with the opening of the so-called south half of the diminished Colville Indian Reservation in *Senate Report Number 1424, 59th Congress, First Session*, in a letter by James McLaughlin, United States Indian Inspector, which letter was attached to the Senate Report. The comment extracted from that letter is as follows:

> "• • • As the Department is fully advised and have detailed information concerning the method of opening the north half under the Act of July 1, 1892, I deem it unnecessary to enter

into details at this time with reference thereto. One thing is certain, that the opening of the north half has been of material benefit to those Indians who are now residing thereon and have received allotments of land in severalty. They have good farms and are as a rule energetic and industrious and absolutely self-supporting, and I attribute this condition, to a great extent, to the fact that they have been thrown in contact with the white people who are located among them since that part of the reservation was opened. Not so with the Indians residing upon the south half of the reservation; and while it is a fact that quite a number of them are industrious, frugal, and hard working people, their condition is not, in point of civilization, to be compared with the Indians residing upon the north half, nearly all of whom I found to be in a prosperous condition and able to speak the English language intelligently. * * *"

The policy of Congress and the Executive Branch of the Government of the United States, is exemplified in the Acts of Congress opening portions of Indian Reservations to settlement and entry by non-Indians. These Acts, of their own force and effect, changed the basic concept and accepted definition of a "reservation". As was said in *United States v. Celestine*, 215 U. S. 278, 285:

"* * * But the word, 'reservation', has a different meaning, for while the body of land described in the section quoted as 'Indian Country' was a reservation, yet a reservation is not necessarily 'Indian Country'. The word is used in the land law to describe any body of land, large or small, *which Congress has reserved from sale for any purpose.* It may be a military

> reservation, or an Indian Reservation, or, indeed, one for any purpose for which Congress has authority to provide, and when Congress has once established a reservation all tracts included within it remain a part of the reservation until separated therefrom by Congress. * * *" (Emphasis supplied)

The Acts of Congress, opening reservations to settlement and entry by non-Indians, and the continuation as reservations of those portions opened to settlement and entry by non-Indians, is in conflict with, the definitions adopted by Congress of the terms, "public lands" and "reservations" as provided in Section 796, Tit. 16 U. S. C., which provides insofar as pertinent:

> "The words defined in this section shall have the following meanings for purposes of this chapter, to wit:
>
> "(1) 'public lands' means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under the public land laws. It shall not include 'reservations', as hereinafter defined;
>
> "(2) 'reservations' means national forests, tribal lands embraced within Indian Reservations, military reservations, and other lands and interest in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; also lands and interest in lands acquired and held for any public purposes; but shall not include national monuments or national parks; * * *"

Also, in *Union Pacific Railroad Company v. Harris*, 215 U. S. 386, 388, this court defined public lands as follows:

> "* * * What is meant by 'public lands' is well settled. As stated in *Newhall v. Sanger*, 92 U. S. 761, 763: 'The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws. * * *'"

It is clear that in most of the cases which are cited and extensively quoted from above, that the issues as drawn in those cases are substantially the same as are found in the case at bar. All of these cases, either directly or by implication, construed the Acts of Congress opening Indian Reservations to settlement and entry by non-Indians as having the effect of withdrawing the lands from within the limits of an Indian Reservation and vesting the state courts with criminal jurisdiction. Therefore, in accord with the authorities above noted, the respondent respectfully submits that the "*situs*" of the crime involved in the case at bar was not "within the limits of any Indian Reservation under the jurisdiction of the United States Government" nor within "Indian Country" as defined by Section 1151, Tit. 18, U. S. C., and the courts of the State of Washington were vested with jurisdiction over the crime of which the petitioner was convicted.

THE "SITUS" OF THE CRIME BEING WITHIN THE "GOVERNMENT TOWN-SITE OF OMAK", RESERVED BY SECTION 11 OF THE ACT OF CONGRESS OF MARCH 22, 1906 CANNOT BE A RESERVATION

FOR THE "FUTURE PUBLIC INTERESTS" AND ALSO AN INDIAN RESERVATION.

It has been established that the crime involved in the case at bar, was committed upon property described as Lot 9, Block 118 of the Government Town-site of Omak, which is a part of the incorporated town of Omak (R-14, 16). The town of Omak, and that portion thereof known as East Omak is separated by the Okanogan River which formerly bounded the reservation on the west side. The crime was committed in East Omak which was formed by the Government Town-site above referred to and its creation authorized by *Section 11 of the Act of Congress of March 22, 1906.* Section 11 of the *Act of Congress of March 22, 1906* (Appendix page 49) provides:

> "Nothing contained in this act shall prohibit the Secretary of the Interior from *reserving from said lands*, whether surveyed or unsurveyed, such *tracts for town-site purposes, as in his opinion may be required for the future public interests, and he may cause any such reservations, or parts thereof*, to be surveyed into blocks and lots of suitable size and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such land should be paid to said Indians, as provided in Sec. 6 of this act." (Emphasis supplied)

Congress has, by Sec. 11 quoted above, authorized the Secretary of the Interior to reserve tracts of land in that portion of the reservation open to settlement and entry for town-site purposes, and the section provides that the lands so

reserved, shall be a reservation for the "future public interests".

The question that arises from the provisions of Section 11. quoted above, is touched upon in the case of *United States v. La Plant*, (D. C.) 200 Fed. 92, 95 wherein the court stated on this point as follows:

> "• • • There is another element in this case which is of importance. Sec. 5 of the Act of 1908 authorizes the Secretary of the Interior 'to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots.' The indictment alleges that the Secretary of Interior had designated a part of Sec. 31 on the land thus opened for sale as the town-site of Dupree, had caused it to be surveyed into blocks and lots, and that *the offense was committed on one of the lots in that town site.* It thus appears that the Secretary of the Interior had reserved this land for a town-site. *If at the same time it is to be considered a part of an Indian Reservation, it has been reserved for two purposes.* When the town-site map was filed, the streets and public places must have been dedicated to the public. Congress could never have intended that the Indian right of occupation as to those streets and public places should continue. It must be that, if the offense had been committed upon a street of this town-site, it would have been within the jurisdiction of the state courts. If it is to be said as to the lots the title was extinguished only when they have been sold and paid for, there would be difficulty in determining, in a particular case, whether an offense had been committed within the limits of a lot which had been sold and dis-

> posed of, and the title to which had been extinguished, or within the limits of an adjacent lot, which had not been sold and disposed of, and as to which the title had not been extinguished, and that difficulty would have to be overcome before it could be determined whether the state courts or the federal courts had jurisdiction. * * *" (Emphasis supplied)

Accordingly, it is the additional contention of the respondent, that the "Government Town-site of Omak", where the crime involved was committed (R 14, 16) became subject to the exercise of criminal jurisdiction by the courts of the State of Washington upon the filing of the town-site plat with the County Auditor of Okanogan County. When so filed, the lands encompassed within the town-site were dedicated to the public interests, and those lands acquired the same status that other lands possessed, which are subject to the exercise of criminal jurisdiction by the courts of the State of Washington. *United States v. La Plant, supra.*

Transmitted contemporaneously with this brief for filing, are a certified copy of the Plat of the Government Town-site of Omak, (marked respondent's Exhibit 1) and a certified copy of the original patent to Lot 9, block 118 of the Government Town-site of Omak, (marked respondent's Exhibit 2) which was the "*situs*" of the crime committed by petitioner.

ARGUMENT IN RESPONSE TO PETITIONER

Counsel for petitioner, at page 10 of his brief, places emphasis upon this court's decision in *Ash Sheep Company v. United States*, 252 U. S. 159, 166. In that case a statute was involved providing a penalty for the grazing of cattle, etc., on land belonging to an Indian or an Indian Tribe without the permission of the Indian Tribe. The *Ash Sheep Company* had grazed sheep upon lands which were on a portion of the Crow Indian Reservation in Montana, which had been opened to settlement and entry pursuant to an agreement with the Indians of the Crow Reservation which had been ratified by Congress. The lands in question had not been settled upon as a homestead under the provisions of the agreement, and the court held that during this period, and until sold under the provisions of the agreement, the Indians were entitled to the benefits of those lands. Therefore, the statute in question was applicable and the lands were defined as being Indian lands and not public lands for the purpose of the statute at issue.

The *Ash Sheep Company* case is not of value to a resolution of the issues here, for the case is not concerned with the issue of *State v. Federal Court Jurisdiction in criminal matters.* Nor does the case shed any light upon the question as to whether or not the lands in controversy continue to be "within the limits of any Indian Reservation under the jurisdiction of the United States Government," or, within

"Indian Country". The case merely stands for the proposition that the Crow Indians had a right of user over the lands opened to entry, until sold under the provisions of the special agreement ratified by Congress.

On page 13 of the petitioner's brief, counsel for the petitioner takes the position that Sec. 1 of the *Act of July 24, 1956*, 70 Stat. 626, "removes any lingering doubt that the Colville Indian Reservation continued to be Indian Country under the jurisdiction of the United States." Sec. 1 of the *Act of Congress of July 24, 1956*, 70 Stat. 626 provides:

> "That the undisposed lands of the Colville Indian Reservation, Washington, dealt with by the Act of March 22, 1906 (34 Stat. 80), are hereby restored to tribal ownership to be held in trust by the United States to the same extent as all other tribal lands on the existing reservation, subject to any existing valid rights."

The above quoted section, it would seem, does have the effect of restoring the reserved character to the undisposed lands restored to tribal ownership. However, that provision does not undo or materially change the effect upon those lands entered and settled upon under the Homestead Laws, and those reserved for townsite purposes under the *Act of Congress of March 22, 1906*, (Appendix page 44) which opened and diminished the south half of the Colville Indian Reservation.

On page 13 of the petitioner's brief, counsel quotes from Sec. 1151, Tit. 18, U. S. C., in part and places emphasis upon the words, "any patent".

The portion of the statute from which counsel quotes, is, of course, a part of the United States Code dealing with the subject of "Indians", "Indian Country", "Indian Reservations", and "Indian Crimes". Therefore, it would seem that Congress intended, in the absence of further specification, to confine those terms "any patent" to the "issuance of any patent" to an Indian. If the Congressional intent were otherwise, it might have said, the "issuance of a patent to any person" and in the absence of such a specification, those terms should be held to apply only to Indians inasmuch as the subject matter of the Act deals with "Indians", "Indian Country", "Indian Reservations" and "Indian Crimes".

In *United States v. Bowling*, 256 U. S. 484, 486 where this court discussed the methods by which the Secretary of Interior made conveyances of land to Indians, the court said:

> "* * * Before coming to the acts under which the Secretary of the Interior proceeded, it will be helpful to refer to the modes, long in use, by which Indians are prevented from improvidently disposing of allotted lands. One is to issue to the allottee a written instrument or certificate, called a trust patent, declaring that the United States will hold the land for a designated period, usually twenty five years, in trust for the sole use and benefit of the allottee, or, in case of his death, of his heirs, and that at the expiration of that period will convey the same to him, or his heirs, in fee, discharged of the trust and free of all charge or incumberance. The other is to issue at once to the

> allottee a patent conveying to him the land in fee and imposing a restriction upon its alienation for twenty five years or some other stated period. While alienation is effectually restricted by either mode, allotments under the first are commonly spoken of as trust allotments and those under the second as restricted allotments. As respects both classes of allotments—one as much as the other—the United States possesses a supervisory control of the land and may take appropriate measures to make sure that it inures to the sole use and benefit of the allottee and his heirs through out the original or any extended period of restriction. * * *"

On pages 14 through the top of page 16, counsel for the petitioner paraphrases and sets forth excerpts from a number of the Acts, in which Congress has made reference to the Colville Indian Reservation in one way or another.

It should be noted, on page 14 of counsel's brief, at subsection (c) thereof, that counsel for petitioner, with commendable candor, has made reference to two Acts of Congress which extend the time for making payments for lands sold under the *Act of Congress of March 22, 1906*, (Appendix page 44). In both of these Acts, reference is made to the "former Colville Indian Reservation". Additionally, some of the other Acts cited in petitioner's brief refer to the "existing reservation" where reference is made to the Colville Indian Reservation.

Although, the Acts of Congress are of value and are entitled to great weight in statutory interpretation, the definition of what an "Indian

Reservation" is, calls for judicial determination in the absence of a legislative definition of those terms in the law relating to Indians. And, in particular, the determination of whether the limits of the Colville Indian Reservation have been altered by the *Act of Congress of March 22, 1906*, (Appendix page 44) "opening" the reservation to settlement by non-Indians, and, whether such Act extinguished the reserved character of the lands settled upon, is a judicial question. Although the Acts of Congress and the opinions of the Department of Interior are entitled to great weight, they are not determinative of such issues.

> "* * * but, if Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular situation may not have been contemplated by the legislators. * * *"
> *Barr v. United States*, 324 U. S. 83.

Counsel for petitioner devotes a portion of his brief, (pages 20-28) to the discussion of cases and memoranda involving jurisdiction of federal or state courts over fee patent lands, within the limits of an Indian reservation. We submit that such cases are not appropriate to the issue of the case at bar, viz., whether the "*situs*" of the crime is "within the limits of any Indian reservation under the jurisdiction of the United States Government."

CONCLUSION

Therefore, upon the basis of the authorities and reasoning herein, the respondent respectfully submits that those lands on the Colville Indian Reservation, settled and entered upon, under the provisions of the *Act of Congress of March 22, 1906,* (Appendix page 44) and those lands reserved for town-site purposes under Sec. 11 thereof, including the "Government Town-site of Omak" are not "within the limits of any Indian Reservation under the jurisdiction of the United States Government" and are not "Indian Country", and the decision of the Supreme Court of the State of Washington should be affirmed.

Respectfully submitted,

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Counsel for Respondent.

APPENDIX

THE ACT OF CONGRESS OF MARCH 22, 1906, 34 STATUTES-AT-LARGE 80.

CHAPTER 1126—AN ACT TO AUTHORIZE THE SALE AND DISPOSITION OF SURPLUS OR UNALLOTTED LANDS OF THE DIMINISHED COLVILLE INDIAN RESERVATION, IN THE STATE OF WASHINGTON, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands in the diminished Colville Indian Reservation, in the State of Washington.

Sec. 2. That as soon as the lands embraced within the diminished Colville Indian Reservation shall have been surveyed, the Secretary of the Interior shall cause allotments of the same to be made to all persons belonging to or having tribal relations on said Colville Indian Reservation, to each man, woman, and child eighty acres, and, upon the approval of such allotments by the Secretary of the Interior, he shall cause patents to issue therefor under the provisions of the general allotment law of the United States.

Sec. 3. That upon the completion of said allotments to said Indians the residue or surplus lands —that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said dimin-

ished Colville Indian Reservation shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the lands classed as mineral lands, which need not be appraised, and which shall be disposed of under the general mining laws of the United States, and, upon completion of the classification and appraisement, such surplus lands shall be open to settlement and entry under the provisions of the homestead laws at not less than their appraised value in addition to the fees and commissions now prescribed by law for the disposition of lands of the value of one dollar and twenty-five cents per acre by proclamation of the President, which proclamation shall prescribe the manner in which these lands shall be settled upon, occupied, and entered by persons entitled to make entry thereof: *Provided*, That the price of said lands when entered shall be fixed by the appraisement, as herein provided for, which shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments to be paid in one, two, three, four, and five years, respectively, from and after the date of entry, and in case any entryman fails to make the annual payments, or any of them, promptly when due all rights in and to the land covered by his or her entry shall cease,

and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry: *Provided further*, That the lands remaining undisposed of at the expiration of five years from the opening of the said lands to entry shall be sold to the highest bidder for cash, at not less than one dollar per acre under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold ten years after the said lands shall have been opened to entry may be sold to the highest bidder for cash without regard to the above minimum limit of price.

Sec. 4. That the said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter any of said lands except as prescribed in such proclamation: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged.

Sec. 5. That all of said lands returned and classified as timber lands shall be sold and disposed of by the Secretary of the Interior under sealed bids

to the highest bidder for cash or at public auction, as the Secretary of the Interior may determine, and under such rules and regulations as he may prescribe.

Sec. 6. That the proceeds not including fees and commissions arising from the sale and disposition of the lands aforesaid, including the sums paid for mineral and town-site lands shall be, after deducting the expenses incurred from time to time in connection with the allotment, appraisement, and sales, and surveys, herein provided, deposited in the Treasury of the United States to the credit of the Colville and confederated tribes of Indians belonging and having tribal rights on the Colville Indian Reservation, in the State of Washington, and shall be expended for their benefit, under the direction of the Secretary of the Interior, in the education and improvement of said Indians, and in the purchase of stock cattle, horse teams, harness, wagons, mowing machines, horserakes, thrashing machines, and other agricultural implements for issue to said Indians, and also for the purchase of material for the construction of houses or other necessary buildings, and a reasonable sum may also be expended by the Secretary, in his discretion, for the comfort, benefit, and improvement of said Indians: *Provided*, That a portion of the proceeds may be paid to the Indians in cash per capita, share and share alike, if, in the opinion of the Secretary of the Interior, such payments will further tend to improve the condition and advance the progress of said Indians, but not otherwise.

Sec. 7. That any of said lands necessary for agency, school, and religious purposes, and any lands now occupied by the agency buildings, and the site of any sawmill, gristmill, or other mill property on said lands are hereby reserved from the operation of this Act: *Provided*, That all such reserved lands shall not exceed in the aggregate three sections and must be selected in legal subdivisions conformable to the public surveys, such selection to be made by the Indian agent of the Colville Agency, under the direction of the Secretary of the Interior and subject to his approval.

Sec. 8. That the Secretary of the Interior is hereby vested with full power and authority to make all needful rules and regulations as to the manner of sale, notice of same, and other matters incident to the carrying out of the provisions of this Act, and with authority to reappraise and reclassify said lands if deemed necessary from time to time, and to continue making sales of the same, in accordance with the provisions of this Act, until all of the lands shall have been disposed of.

Sec. 9. That nothing in this Act contained shall be construed to bind the United States to find purchasers for any of said lands, it being the purpose of this Act merely to have the United States to act as trustee for said Indians in the disposition and sales of said lands and to expend or pay over to them the net proceeds derived from the sales as herein provided.

Sec. 10. That to enable the Secretary of the Interior to survey, allot, classify, appraise, and conduct the sale and entry of said lands as in this Act provided the sum of seventy-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, from any money in the Treasury not otherwise appropriated, the same to be reimbursed from the proceeds of the sales of the aforesaid lands: *Provided*, That when funds shall have been procured from the first sales of the land the Secretary of the Interior may use such portion thereof as may be actually necessary in conducting future sales and otherwise carrying out the provisions of this Act.

Sec. 11. That nothing contained in this Act shall prohibit the Secretary of the Interior from reserving from said lands, whether surveyed or unsurveyed, such tracts for town-site purposes, as in his opinion may be required for the future public interests, and he may cause any such reservations, or parts thereof, to be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such lands shall be paid to said Indians, as provided in section six of this Act.

Sec. 12. That if any of the lands of said diminished Colville Indian Reservation can be included in any feasible irrigation project under the reclamation Act of June seventeenth, nineteen hundred and two, the Secretary of the Interior is authorized to

withhold said lands from disposition under this Act and to dispose of them under the said reclamation Act, and the charges provided for by said reclamation Act shall be in addition to the appraised value of said lands fixed as hereinbefore provided and shall be paid in annual installments as required under the said reclamation Act, and the amounts to be paid for the land, according to appraisement, shall be credited to the fund herein established for the benefit of the Colville Indians.

Approved, March 22, 1906.